



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

#### Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

#### Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The landlord confirmed service of the tenant’s applications for dispute resolution, including the notice of hearing and evidence on file.

The tenant testified she did not receive the landlord's application or evidence package aside from a one page letter dated August 15, 2022 which she received September 23, 2022.

The landlord testified that on September 2, 2022 a copy of the landlord's Application for Dispute Resolution and evidence package was sent to the tenant by registered mail. The landlord submitted a registered mail tracking number in support of service (RN 620799847CA). The landlord also provided a Registered Mail tracking number for the August 15, 2022 letter which was sent on September 14, 2022 (RN 672561783CA). A registered mail tracking search indicates the first package as being received on September 23, 2022 and the second package as being returned to the landlord as unclaimed.

Based on the above evidence and pursuant to sections 89 & 90 of the Act, I find the tenant to be deemed served with both the landlord's Application for Dispute Resolution, including initial evidence package as well as the subsequent letter. I note that as the tenant had filed her own application to dispute the 10 Day Notice and the landlord could be granted an order of possession and a monetary order if the tenant's application were to be dismissed, nothing really turns on my finding that the tenant was deemed served.

#### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application to cancel the Notice to End Tenancy for unpaid rent, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

#### Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is either party entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy began on December 1, 2019. The current monthly rent is \$1117.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$550.00 at the start of the tenancy which the landlord continues to hold.

The parties submitted a copy of a 10 Day Notice dated August 15, 2022, which was received by the tenant on this same date. The 10 Day Notice indicates the tenant failed to pay rent in the amount of \$1117.00 which was due on August 1, 2022. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

Counsel for the landlord submits that although the tenant provided a rent cheque for the August 2022 rent, the landlord was not able to deposit the cheque as they were informed by the bank the cheque was a duplicate. On August 14, 2022, the landlord communicated this issue to the tenant in writing but mistakenly stated the reason was due to insufficient funds in the account. On August 15, 2022, the landlord provided a new letter to the tenant clarifying the issue was not due to insufficient funds but rather the cheque being a duplicate. The landlord requested the tenant replace the cheque with a bank draft or cash. The tenant failed to replace the cheque; therefore, the landlord issued a 10 Day Notice on August 15, 2022. The landlord has still not received a replacement cheque for August 2022 and it remains outstanding as of the date of the hearing.

The tenant argues that she never received the original August 2022 rent cheque back even though she has requested it back. The tenant believes the landlord never tried to put the cheque through her bank and submitted a letter from her bank stating she had sufficient funds to cover the cheque. The tenant also argued that she was not provided with full details or paperwork from the bank which indicated what the issue with the cheque was. The tenant states she did not receive the August 15, 2022 clarification letter from the landlord until it was sent to her by mail as evidence for this hearing. The tenant went on to make allegations of the landlord targeting her and the documents being fabricated.

In reply, the landlord's agent A.G. testified that she still hold the original cheque and it would have been returned to the tenant as requested as soon as she issued a replacement. The landlord's counsel submits the tenant made various accusations

without any evidence to back them up and at the end of the day, the tenant still did not pay the August 2022 rent even after being issued a 10 Day Notice.

### Analysis

It was not disputed that the tenant was served with the 10 Day Notice on August 15, 2022.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant did not pay the outstanding rent in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. The tenant argued that the landlord did not attempt to deposit the cheque she provided and took issue with the reason provided by the landlord's bank for not accepting the cheque. I find the simple solution here would have been for the tenant to issue a replacement cheque and the matter could have been resolved. Even after the tenant was served with the 10 Day Notice, the tenant did not issue a replacement cheque. If the tenant had concerns with the landlord still holding the original cheque, the tenant could have put a stop payment on that cheque. I find the tenant has not provided any evidence to support her accusations that the landlord was just out to get her or that the landlord somehow fabricated the bank documents.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find that the tenant was obligated to pay monthly rent in the amount of \$1117.00 but failed to pay rent for the month of August 2022. I accept the landlord's claim for outstanding rent of \$1117.00. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1217.00.

The landlord continues to hold a security deposit of \$550.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$667.00.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$667.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 02, 2022

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Residential Tenancy Branch